



CITY CLERK

## CITY OF SAN JOSÉ, CALIFORNIA

Office of the City Clerk  
200 East Santa Clara Street  
San José, California 95113  
Telephone (408) 535-1260  
FAX (408) 292-6207

STATE OF CALIFORNIA     )  
COUNTY OF SANTA CLARA     )  
CITY OF SAN JOSE     )

I, Lee Price, City Clerk & Ex-Officio Clerk of the Council of and for the City of San Jose, in said County of Santa Clara, and State of California, do hereby certify that "**Ordinance No. 27606**" the original copy of which is attached hereto, was passed publication of title on the **15<sup>th</sup> day of November, 2005**, was published in accordance with the provisions of the Charter of the City of San Jose, and was given final reading and adopted on the **29<sup>th</sup> day of November, 2005**, by the following vote:

AYES: CAMPOS, CHAVEZ, CHIRCO, CORTESE, LeZOTTE, NGUYEN,  
PYLE, REED, WILLIAMS; GONZALES

NOES: NONE

ABSENT YEAGER

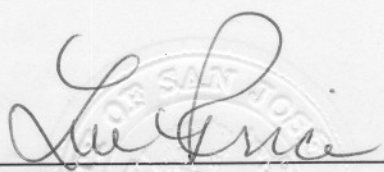
DISQUALIFIED: NONE

VACANT: NONE

Said ordinance is effective as of **December 30, 2005**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San Jose, this **2<sup>nd</sup> day of December, 2005**

(SEAL)

  
LEE PRICE, CMC  
CITY CLERK & EX-OFFICIO  
CLERK OF THE CITY COUNCIL

12/02/05csd

ORDINANCE NO. 27606

**AN ORDINANCE OF THE CITY OF SAN JOSE, EFFECTIVE AS OF JANUARY 1, 2006 AND EXPIRING AS OF DECEMBER 31, 2006, PROVIDING FOR A LIMITED EXCEPTION TO ORDINANCE NO. 21663 WHICH PRECLUDES SECOND UNITS, AND AUTHORIZING A TEMPORARY SECOND UNIT PILOT PROGRAM FOR THE ISSUANCE OF A MAXIMUM OF 100 SECOND UNIT PERMITS FOR NEW CONSTRUCTION DURING A ONE-YEAR EVALUATION PERIOD, WHICH PILOT PROJECT AUTOMATICALLY TERMINATES IF 100 PERMITS ARE ISSUED DURING THE EVALUATION PERIOD OR NO LATER THAN THE EXPIRATION DATE OF THE ORDINANCE, AND WHICH ESTABLISHES SPECIFIED REQUIREMENTS PERTAINING TO MINIMUM LOT SIZE, MAXIMUM UNIT SIZE AND NUMBER OF BEDROOMS, PARKING, DEVELOPMENT STANDARDS, DESIGN STANDARDS, AND APPLICABLE FEES**

**WHEREAS**, Government Code Section 65852.2 of the California Government Code requires cities and counties to provide for the creation of second units in single-family and multi-family residential zones unless a preclusionary ordinance is adopted pursuant to Subsection (c) of said Section 65852.2; and

**WHEREAS**, the Council of the City of San Jose adopted Ordinance No. 21663 on May 15<sup>th</sup>, 1984, in accordance with said Section 65852.2(c), precluding second units within the City of San Jose; and

**WHEREAS**, Ordinance No. 21663 details the impacts that an unrestricted program for second units would likely have on the City's budget and operation and maintenance of City infrastructure and services; and

**WHEREAS**, the Council of the City of San Jose desires to establish a limited exception to the preclusion of second units within the City as a pilot program only, thereby avoiding the potential impacts of an unrestricted program for second units, so as not to create the potential burdens that were analyzed and determined in Ordinance No. 21663; and

**WHEREAS**, the pilot program is limited to no more than 100 new units within the City during calendar year 2006, and additionally allows the issuance of permits for those

existing second units that comply with the provisions of this Ordinance and applicable provisions of the Building and Zoning Codes; and

**WHEREAS**, this limited exception to Ordinance No. 21663 and the pilot program approved in this Ordinance commences on January 1, 2006 and will expire no later than December 31, 2006 after which period the general prohibitions on such units contained in Ordinance No. 21663 will continue in full force and effect, unless Council by further action amends or extends the pilot program; and

**WHEREAS**, nothing in the adoption of this pilot program shall be deemed to authorize or permit any unlawful units constructed in violation of Ordinance No. 21663 or the City's Municipal Code, or that do not conform with the requirements and conditions of this Ordinance; and

**WHEREAS**, on November 2, 2005, this Ordinance was found to be categorically exempt from environmental review per the provisions of Section 15061(b)(3) of the California Environmental Quality Act of 1970, as amended, under File No. PP05-196;

**NOW, THEREFORE**, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

### **Section 1. Definitions**

- A. **Primary Dwelling Unit.** A "primary dwelling unit" is the principle residential structure on a parcel that has been lawfully constructed in accordance with applicable provisions of the San Jose Municipal Code.
- B. **Second Unit.** A "second unit" means an attached or detached residential dwelling unit which provides complete independent living facilities for one or more persons, that includes permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the primary dwelling unit is situated, and that also meets all of the following requirements:

(1) is built in accordance with the Building Code set forth in Title 24 of the San Jose Municipal Code ("Municipal Code"), and, except as expressly set forth in this Ordinance, in accordance with the provisions of the Zoning Code in Title 20 of the San Jose;

(2) includes a full kitchen (including a sink, food storage, and permanent cooking facilities such as a oven and range or cooktop); and



(3) includes a full bathroom.

**Section 2. Permit Required.** No second unit may be constructed in any part of the City unless a permit authorizing the construction of the second unit is obtained from the Director of Planning, Building, and Code Enforcement.

**Section 3. Restrictions on Issuance of Second Unit Permit.**

A second unit permit shall be issued only if the application for the permit complies with all of the following requirements:

- A. **Zoning District.** A second unit shall be permitted pursuant to this Ordinance only in the R-1 Zoning District (as defined in Section 20.30.010 of Chapter 20.30 of Title 20 of the San Jose Municipal Code), or in Planned Development districts or cluster subdivisions that are authorized in accordance with Chapter 20.60 of Title 20 of the San Jose Municipal Code and that are subject to the standards and allow the uses of an R-1 Zoning District.
- B. **Minimum Lot Size.** The minimum lot size on which a second unit that is attached to a primary dwelling unit shall be allowed is 6,000 square feet. The minimum lot size on which a second unit that is detached from a primary dwelling unit shall be allowed is 8,000 square feet.
- C. **Maximum Second Unit Floor Area.** A second unit shall not exceed a maximum gross floor area of 600 square feet.
- D. **Maximum Bedroom Area.** A second unit shall have no more than one bedroom. The bedroom shall not exceed more than 400 square feet of the maximum gross floor area of the second unit.
- E. **Maximum Accessory Storage Area.** The total amount of accessory storage area in any second unit shall not exceed 60 square feet.
- F. **Required Parking.** One additional on-site parking space, in addition to the two required on-site parking spaces for the primary dwelling unit, is required for a second unit. Tandem parking that otherwise complies with setback and paving requirements set forth in Section 20.90.120 of the Municipal Code, shall be allowed.

G. **Development Standards.** Second units shall comply with all of the following development standards:

1. The second unit shall be subject to the setback requirements of the Zoning District in which the primary dwelling unit is located, as set forth in Chapter 20.30 of the Municipal Code.
2. Detached second units shall be located behind the primary dwelling unit.
3. Detached second units shall be located at least 6 feet away from the primary dwelling unit.
4. Detached second units shall be limited to a maximum of one story and 16 feet in height, with an average roof height of no greater than 12 feet. Average roof height is measured halfway up the slope of the roof, and in no case shall any portion of the roof height of a detached second unit exceed 16 feet. Roof height shall be determined in accordance with San Jose Municipal Code Section 20.200.510.

H. **Design Standards.** Second units shall comply with the following design standards:

1. Second units shall be constructed with façade materials identical in color, and similar in texture and appearance to the primary dwelling unit, including but not limited to roofing, siding, and windows and doors.
2. A second unit shall match the roof pitch and roof form of the primary dwelling unit in order to blend with the architecture of the primary dwelling unit.
3. The front door of any second unit shall not be visible from the street, meaning that it shall not be located on the same elevation fronting the street as the primary dwelling unit.
4. The windows of any second unit shall be placed on the second unit in locations that do not allow a direct view into the interiors of adjacent residential structures, or into the back yards of adjacent residential properties.

#### **Section 4. Application Requirements.**

- A. **Application – Owner Residence.** As part of the second unit application, the owner of record shall submit a declaration under penalty of perjury stating that the primary dwelling unit existing on the property is the owner's residence. Sufficient documentation of ownership shall be provided with the declaration. Nothing in this Section 4(A) shall be deemed to affect the legal status of a second unit built with a lawfully issued permit if the property is subsequently transferred or sold, or if the primary dwelling unit or second unit is subsequently rented or leased.
- B. **Code Compliance – Primary Dwelling Unit.** An application for a second unit permit shall not be deemed complete, and a permit shall not be issued, if the City determines that the primary dwelling unit will continue to have uncorrected violations involving applicable Zoning and Building Code requirements, or fire or safety hazards. This provision does not prevent an owner of an existing second unit that otherwise is in compliance with this Ordinance from making an application to obtain legal status for such unit, as provided in Section 5 below.
- C. **Applicable Fees.** An applicant for a second unit permit shall be required to pay all applicable fees assessed to new development as such fees are set forth by Council resolution.

**Section 5. Existing Second Units.** Second units that pre-date the adoption of this Ordinance, and that meet the criteria of this pilot program as specified in this Ordinance, are eligible to obtain legal status, upon application and issuance of applicable permits for the existing second unit, and provided that the primary dwelling unit is otherwise in compliance with applicable Zoning and Building Code requirements as specified in Section 4(C) above. Issuance of permits for existing second units shall not be subject to the limit of 100 permits for new second units.

**Section 6. Other Permits Required.** Nothing in this Ordinance supersedes requirements for obtaining development permits pursuant to Title 20 of the Municipal Code, or for properties subject to the Historic Preservation Permit requirements set forth in Chapter 13.48 of Title 13 of the San Jose Municipal Code.

**Section 7. Effective Date.** The provisions of this ordinance will take effect on January 1, 2006.

**Section 8. Termination of Pilot Program.** This Ordinance and the second unit pilot program set forth herein shall expire and be of no further force and effect as of December 31, 2006. The expiration of this Ordinance and the second unit pilot program shall not affect the permitted legal status of second units duly authorized during the pilot program. Upon expiration of this Ordinance, or upon the issuance of 100 second unit permits, whichever first occurs, the total preclusion of second units set forth in Ordinance No. 21663 shall automatically resume.

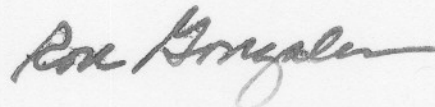


**Section 9. Status of Existing Unlawful Second Units.** Nothing in this Ordinance shall be deemed to affect the legal status of second units that pre-date the adoption of this Ordinance and are not otherwise lawful under the Municipal Code or the provisions of this Ordinance, or for which second unit permits are not obtained during the pilot program authorized under this Ordinance. The City may enforce the federal, state, and local laws, rules and regulations applicable to such unlawful second units to the fullest extent permitted by law.

**Section 10. Conflicting Provisions.** Except as and only to the extent expressly modified by this Ordinance, the provisions of the San Jose Municipal Code shall remain in full force and effect and applicable to primary dwelling units and second units. In the event of a direct conflict between the provisions and requirements of the San Jose Municipal Code and this Ordinance, the provisions and requirements of this Ordinance shall prevail and control and apply to the extent necessary to fulfill the requirements and purposes of this Ordinance.

PASSED FOR PUBLICATION of title this 15<sup>th</sup> day of November, 2005, by the following vote:

AYES:	CAMPOS, CHIRCO, CORTESE, LeZOTTE, NGUYEN, PYLE, REED, WILLIAMS; GONZALES
NOES:	CHAVEZ, YEAGER
ABSENT:	NONE
DISQUALIFIED:	NONE



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RON GONZALES  
Mayor

ATTEST:

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LEE PRICE, CMC  
City Clerk

**SAN JOSE POST-RECORD**

90 N FIRST ST STE 100, SAN JOSE, CA 95113  
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CECILIA DELGADO  
SAN JOSE CITY CLERK  
200 E. SANTA CLARA ST.  
SAN JOSE, CA - 95113

**PROOF OF PUBLICATION**

(2015.5 C.C.P.)

State of California )  
County of SANTA CLARA ) ss

Notice Type: GORSJ - SAN JOSE ORDINANCE (1 PUB)

Ad Description: ORDINANCE #27606

I am a citizen of the United States and a resident of the State of California; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of the printer and publisher of the SAN JOSE POST-RECORD, a newspaper published in the English language in the city of SAN JOSE, county of SANTA CLARA, and adjudged a newspaper of general circulation as defined by the laws of the State of California by the Superior Court of the County of SANTA CLARA, State of California, under date 02/03/1922, Case No. 27844. That the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

11/22/2005

Executed on: 11/22/2005  
At Los Angeles, California

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

  
Signature

RECEIVED  
San Jose City Clerk

2005 NOV 29 P 3:35

3'

SJ#: 894378

**ORDINANCE NO. 27606**

An Ordinance of the City of San Jose, Effective as of January 1, 2006 and Expiring as of December 31, 2006, Providing for a Limited Exception to Ordinance No. 21663 Which Precludes Second Units, and Authorizing A Temporary Second Unit Pilot Program for the Issuance of A Maximum of 100 Second Unit Permits for New Construction During A One-Year Evaluation Period, Which Pilot Project Automatically Terminates If 100 Permits are Issued During the Evaluation Period or No Later than the Expiration Date of the Ordinance, and Which Establishes Specified Requirements Pertaining to Minimum Lot Size, Maximum Unit Size, and Number of Bedrooms, Parking, Development Standards, Design Standards, and Applicable Fees  
PASSED FOR PUBLICATION of title this 15th day of November, 2005, by the following vote:  
AYES: CAMPOS, CHIRCO, CORTESE, LeZOTTE, NGUYEN, PYLE, REED, WILLIAMS, GONZALES  
NOES: CHAVEZ, YEAGER  
ABSENT: NONE  
DISQUALIFIED: NONE  
RON GONZALES  
Mayor  
ATTEST:  
LEE PRICE, CMC  
City Clerk  
11/22/2005

SJ-894378#